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HOUSE BILL 348

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Joseph Cervantes

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO EMERGENCY HEALTH CARE; ENACTING THE UNIFORM
EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Uniform Emergency Volunteer Health Practitioners Act".

Section 2. DEFINITIONS.--As used in the Uniform Emergency
Volunteer Health Practitioners Act:

A. "disaster relief organization" means an entity
that provides emergency or disaster relief services that
include health or veterinary services provided by volunteer
health practitioners and that:

(1) is designated or recognized as a provider
of those services pursuant to a disaster response and recovery
plan adopted by an agency of the federal government or the

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1 homeland security and emergency management department; or

2 (2) regularly plans and conducts its
3 activities in coordination with an agency of the federal
4 government or the homeland security and emergency management
5 department;

6 B. "emergency" means an event or condition that is
7 an emergency, disaster, public health emergency or similar
8 event or condition pursuant to the laws of this state;

9 C. "emergency declaration" means a declaration of
10 emergency issued by a person authorized to do so pursuant to
11 the laws of this state;

12 D. "Emergency Management Assistance Compact" means
13 the interstate compact approved by congress by Public Law No.
14 104-321, 110 Stat. 3877 and codified at Sections 12-10-14 and
15 12-10-15 NMSA 1978;

16 E. "entity" means a person other than an
17 individual;

18 F. "health facility" means an entity licensed
19 pursuant to the laws of this or another state to provide health
20 or veterinary services;

21 G. "health practitioner" means an individual
22 licensed pursuant to the laws of this or another state to
23 provide health or veterinary services;

24 H. "health services" means the provision of
25 treatment, care, advice or guidance, or other services or

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1 supplies, related to the health or death of individuals or
2 human populations, to the extent necessary to respond to an
3 emergency, including:

4 (1) the following, concerning the physical or
5 mental condition or functional status of an individual or
6 affecting the structure or function of the body:

7 (a) preventive, diagnostic, therapeutic,
8 rehabilitative, maintenance or palliative care; and

9 (b) counseling, assessment, procedures
10 or other services;

11 (2) the sale or dispensing of a drug, a
12 device, equipment or another item to an individual in
13 accordance with a prescription; and

14 (3) funeral, cremation, cemetery or other
15 mortuary services;

16 I. "host entity" means an entity operating in this
17 state that uses volunteer health practitioners to respond to an
18 emergency;

19 J. "license" means authorization by a state to
20 engage in health or veterinary services that are unlawful
21 without the authorization. "License" includes authorization
22 pursuant to the laws of this state to an individual to provide
23 health or veterinary services based upon a national
24 certification issued by a public or private entity;

25 K. "person" means an individual, corporation,

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1 business trust, trust, partnership, limited liability company,
2 association, joint venture, public corporation, government or
3 governmental subdivision, agency or instrumentality or any
4 other legal or commercial entity;

5 L. "scope of practice" means the extent of the
6 authorization to provide health or veterinary services granted
7 to a health practitioner by a license issued to the
8 practitioner in the state in which the principal part of the
9 practitioner's services are rendered, including any conditions
10 imposed by the licensing authority;

11 M. "state" means a state of the United States, the
12 District of Columbia, Puerto Rico, the United States Virgin
13 Islands or any territory or insular possession subject to the
14 jurisdiction of the United States;

15 N. "veterinary services" means the provision of
16 treatment, care, advice or guidance, or other services or
17 supplies, related to the health or death of an animal or to
18 animal populations, to the extent necessary to respond to an
19 emergency, including:

20 (1) the diagnosis, treatment or prevention of
21 an animal disease, injury or other physical or mental condition
22 by the prescription, administration or dispensing of a vaccine,
23 medicine, surgery or therapy;

24 (2) the use of a procedure for reproductive
25 management; and

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1 (3) the monitoring and treatment of animal
2 populations for diseases that have spread or demonstrate the
3 potential to spread to humans; and

4 0. "volunteer health practitioner" means a health
5 practitioner who provides health or veterinary services,
6 whether or not the practitioner receives compensation for those
7 services. "Volunteer health practitioner" does not include a
8 practitioner who receives compensation pursuant to a
9 preexisting employment relationship with a host entity or
10 affiliate that requires the practitioner to provide health
11 services in this state, unless the practitioner is not a
12 resident of this state and is employed by a disaster relief
13 organization providing services in this state while an
14 emergency declaration is in effect.

15 Section 3. APPLICABILITY TO VOLUNTEER HEALTH
16 PRACTITIONERS.--The Uniform Emergency Volunteer Health
17 Practitioners Act applies to volunteer health practitioners
18 registered with a registration system that complies with
19 Section 5 of that act and who provide health or veterinary
20 services in this state for a host entity while an emergency
21 declaration is in effect.

22 Section 4. REGULATION OF SERVICES DURING EMERGENCY.--

23 A. While an emergency declaration is in effect, the
24 homeland security and emergency management department may
25 limit, restrict or otherwise regulate:

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1 (1) the duration of practice by volunteer
2 health practitioners;

3 (2) the geographical areas in which volunteer
4 health practitioners may practice;

5 (3) the types of volunteer health
6 practitioners who may practice; and

7 (4) any other matters necessary to coordinate
8 effectively the provision of health or veterinary services
9 during the emergency.

10 B. An order issued pursuant to Subsection A of this
11 section may take effect immediately, without prior notice or
12 comment.

13 C. A host entity that uses volunteer health
14 practitioners to provide health or veterinary services in this
15 state shall:

16 (1) consult and coordinate its activities with
17 the homeland security and emergency management department to
18 the extent practicable to provide for the efficient and
19 effective use of volunteer health practitioners; and

20 (2) comply with any laws other than the
21 Uniform Emergency Volunteer Health Practitioners Act relating
22 to the management of emergency health or veterinary services,
23 including the Emergency Medical Services Act and the All Hazard
24 Emergency Management Act.

25 Section 5. VOLUNTEER HEALTH PRACTITIONER REGISTRATION

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1 SYSTEMS.--

2 A. To qualify as a volunteer health practitioner
3 registration system, a system shall:

4 (1) accept applications for the registration
5 of volunteer health practitioners before or during an
6 emergency;

7 (2) include information about the licensure
8 and good standing of health practitioners that is accessible by
9 authorized persons;

10 (3) be capable of confirming the accuracy of
11 information concerning whether a health practitioner is
12 licensed and in good standing before health services or
13 veterinary services are provided pursuant to the Uniform
14 Emergency Volunteer Health Practitioners Act; and

15 (4) meet one of the following conditions:

16 (a) be an emergency system for advance
17 registration of volunteer health care practitioners established
18 by a state and funded through the health resources services
19 administration pursuant to Section 319I of the federal Public
20 Health Service Act, 42 U.S.C. Section 247d-7b, as amended;

21 (b) be a local unit consisting of
22 trained and equipped emergency response, public health and
23 medical personnel formed pursuant to Section 2801 of the Public
24 Health Service Act, 42 U.S.C. Section 300hh, as amended;

25 (c) be operated by a: 1) disaster

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1 relief organization; 2) licensing board; 3) national or
2 regional association of licensing boards or health
3 practitioners; 4) health facility that provides comprehensive
4 inpatient and outpatient health care services, including a
5 tertiary care and teaching hospital; or 5) governmental entity;
6 or

7 (d) be designated by the homeland
8 security and emergency management department as a registration
9 system for purposes of the Uniform Emergency Volunteer Health
10 Practitioners Act.

11 B. While an emergency declaration is in effect, the
12 homeland security and emergency management department, a person
13 authorized to act on behalf of the homeland security and
14 emergency management department or a host entity may confirm
15 whether volunteer health practitioners used in this state are
16 registered with a registration system that complies with
17 Subsection A of this section. Confirmation is limited to
18 obtaining identities of the volunteer health practitioners from
19 the system and determining whether the system indicates that
20 the volunteer health practitioners are licensed and in good
21 standing.

22 C. Upon request of a person in this state
23 authorized pursuant to Subsection B of this section or a
24 similarly authorized person in another state, a registration
25 system located in this state shall notify the person of the

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1 identities of volunteer health practitioners and whether the
2 volunteer health practitioners are licensed and in good
3 standing.

4 D. A host entity is not required to use the
5 services of a volunteer health practitioner even if the
6 volunteer health practitioner is registered with a registration
7 system that indicates that the volunteer health practitioner is
8 licensed and in good standing.

9 Section 6. RECOGNITION OF VOLUNTEER HEALTH PRACTITIONERS
10 LICENSED IN OTHER STATES.--

11 A. While an emergency declaration is in effect, a
12 volunteer health practitioner registered with a registration
13 system that complies with Section 5 of the Uniform Emergency
14 Volunteer Health Practitioners Act and licensed and in good
15 standing in the state upon which the volunteer health
16 practitioner's registration is based may practice in this state
17 to the extent authorized by that act as if the volunteer health
18 practitioner were licensed in this state.

19 B. A volunteer health practitioner qualified
20 pursuant to Subsection A of this section is not entitled to the
21 protections of the Uniform Emergency Volunteer Health
22 Practitioners Act if the volunteer health practitioner is
23 licensed in more than one state and any license of the
24 volunteer health practitioner is suspended, revoked or subject
25 to an agency order limiting or restricting practice privileges

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1 or has been voluntarily terminated under threat of sanction.

2 Section 7. NO EFFECT ON CREDENTIALING AND PRIVILEGING.--

3 A. As used in this section:

4 (1) "credentialing" means obtaining, verifying
5 and assessing the qualifications of a health practitioner to
6 provide treatment, care or services in or for a health
7 facility; and

8 (2) "privileging" means the authorizing by an
9 appropriate authority, such as a governing body, of a health
10 practitioner to provide specific treatment, care or services at
11 a health facility subject to limits based on factors that
12 include license, education, training, experience, competence,
13 health status and specialized skill.

14 B. The Uniform Emergency Volunteer Health
15 Practitioners Act does not affect credentialing or privileging
16 standards of a health facility and does not preclude a health
17 facility from waiving or modifying those standards while an
18 emergency declaration is in effect.

19 Section 8. PROVISION OF VOLUNTEER HEALTH OR VETERINARY
20 SERVICES--ADMINISTRATIVE SANCTIONS.--

21 A. Subject to Subsections B and C of this section,
22 a volunteer health practitioner shall adhere to the scope of
23 practice for a similarly licensed practitioner established by
24 the licensing provisions, practice acts or other laws of this
25 state.

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1 B. Except as otherwise provided in Subsection C of
2 this section, the Uniform Emergency Volunteer Health
3 Practitioners Act does not authorize a volunteer health
4 practitioner to provide services that are outside the volunteer
5 health practitioner's scope of practice, even if a similarly
6 licensed practitioner in this state would be permitted to
7 provide the services.

8 C. The homeland security and emergency management
9 department may modify or restrict the health or veterinary
10 services that volunteer health practitioners may provide
11 pursuant to the Uniform Emergency Volunteer Health
12 Practitioners Act. An order pursuant to this subsection may
13 take effect immediately, without prior notice or comment.

14 D. A host entity may restrict the health or
15 veterinary services that a volunteer health practitioner may
16 provide pursuant to the Uniform Emergency Volunteer Health
17 Practitioners Act.

18 E. A volunteer health practitioner does not engage
19 in unauthorized practice unless the volunteer health
20 practitioner has reason to know of any limitation, modification
21 or restriction pursuant to the provisions of this section or
22 that a similarly licensed practitioner in this state would not
23 be permitted to provide the services. A volunteer health
24 practitioner has reason to know of a limitation, modification
25 or restriction or that a similarly licensed practitioner in

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1 this state would not be permitted to provide a service if:

2 (1) the volunteer health practitioner knows
3 the limitation, modification or restriction exists or that a
4 similarly licensed practitioner in this state would not be
5 permitted to provide the service; or

6 (2) from all the facts and circumstances known
7 to the volunteer health practitioner at the relevant time, a
8 reasonable person would conclude that the limitation,
9 modification or restriction exists or that a similarly licensed
10 practitioner in this state would not be permitted to provide
11 the service.

12 F. In addition to the authority granted by law of
13 this state other than the Uniform Emergency Volunteer Health
14 Practitioners Act to regulate the conduct of health
15 practitioners, a licensing board or other disciplinary
16 authority in this state:

17 (1) may impose administrative sanctions upon a
18 health practitioner licensed in this state for conduct outside
19 of this state in response to an out-of-state emergency;

20 (2) may impose administrative sanctions upon a
21 practitioner not licensed in this state for conduct in this
22 state in response to an in-state emergency; and

23 (3) shall report any administrative sanctions
24 imposed upon a practitioner licensed in another state to the
25 appropriate licensing board or other disciplinary authority in

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1 any other state in which the practitioner is known to be
2 licensed.

3 G. In determining whether to impose administrative
4 sanctions pursuant to Subsection F of this section, a licensing
5 board or other disciplinary authority shall consider the
6 circumstances in which the conduct took place, including any
7 exigent circumstances, and the practitioner's scope of
8 practice, education, training, experience and specialized
9 skill.

10 Section 9. RELATION TO OTHER LAWS.--

11 A. The Uniform Emergency Volunteer Health
12 Practitioners Act does not limit rights, privileges or
13 immunities provided to volunteer health practitioners by laws
14 other than the Uniform Emergency Volunteer Health Practitioners
15 Act. Except as otherwise provided in Subsection B of this
16 section, the Uniform Emergency Volunteer Health Practitioners
17 Act does not affect requirements for the use of health
18 practitioners pursuant to the Emergency Management Assistance
19 Compact.

20 B. The homeland security and emergency management
21 department, pursuant to the provisions of the Emergency
22 Management Assistance Compact, may incorporate into the
23 emergency forces of this state volunteer health practitioners
24 who are not officers or employees of this state, a political
25 subdivision of this state or a municipality or other local

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1 government within this state.

2 Section 10. REGULATORY AUTHORITY.--The homeland security
3 and emergency management department may promulgate rules to
4 implement the Uniform Emergency Volunteer Health Practitioners
5 Act. In doing so, the homeland security and emergency
6 management department shall consult with and consider the
7 recommendations of the entity established to coordinate the
8 implementation of the Emergency Management Assistance Compact
9 and shall also consult with and consider rules promulgated by
10 similarly empowered agencies in other states to promote
11 uniformity of application of the Uniform Emergency Volunteer
12 Health Practitioners Act and make the emergency response
13 systems in the various states reasonably compatible.

14 Section 11. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER
15 HEALTH PRACTITIONERS.--

16 A. Subject to Subsection B of this section, a
17 volunteer health practitioner who does not receive compensation
18 that exceeds five hundred dollars (\$500) per year for providing
19 health or veterinary services pursuant to the Uniform Emergency
20 Volunteer Health Practitioners Act is not liable for damages
21 for an act or omission of the practitioner in providing those
22 services. Reimbursement of or allowance for reasonable
23 expenses or continuation of salary while on leave is not
24 compensation pursuant to this subsection.

25 B. This section does not limit the liability of a

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1 volunteer health practitioner for:

2 (1) willful misconduct or wanton, grossly
3 negligent, reckless or criminal conduct;

4 (2) an intentional tort;

5 (3) breach of contract;

6 (4) a claim asserted by a host entity or by an
7 entity located in this or another state that employs or uses
8 the services of the practitioner; or

9 (5) an act or omission relating to the
10 operation of a motor vehicle, vessel, aircraft or other
11 vehicle.

12 C. A person who, pursuant to the Uniform Emergency
13 Volunteer Health Practitioners Act, operates, uses or relies
14 upon information provided by a volunteer health practitioner
15 registration system is not liable for damages for an act or
16 omission relating to that operation, use or reliance unless the
17 act or omission is an intentional tort or is willful misconduct
18 or wanton, grossly negligent, reckless or criminal conduct.

19 D. In addition to the protections provided in
20 Subsection A of this section, a volunteer health practitioner
21 providing health or veterinary services pursuant to the Uniform
22 Emergency Volunteer Health Practitioners Act is entitled to all
23 the rights, privileges or immunities provided by the laws of
24 this state other than the Uniform Emergency Volunteer Health
25 Practitioners Act.

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1 Section 12. WORKERS' COMPENSATION COVERAGE.--

2 A. As used in this section, "injury" means a
3 physical or mental injury or disease for which an employee of
4 this state who is injured or contracts the disease in the
5 course of the employee's employment would be entitled to
6 benefits under the workers' compensation law of this state.

7 B. A volunteer health practitioner who provides
8 health or veterinary services pursuant to the Uniform Emergency
9 Volunteer Health Practitioners Act and who is not otherwise
10 eligible for benefits for injury or death under the workers'
11 compensation law of this or another state may elect to be
12 deemed an employee of this state for the purpose of receiving
13 such benefits by making a claim in accordance with the workers'
14 compensation law of this state.

15 C. The department of health shall promulgate and
16 adopt rules, enter into agreements with other states or take
17 other measures to facilitate the receipt of benefits for injury
18 or death under the workers' compensation law of this state by
19 volunteer health practitioners who reside in other states and
20 may waive or modify requirements for filing, processing and
21 paying claims that unreasonably burden the practitioners. To
22 promote uniformity of application of the Uniform Emergency
23 Volunteer Health Practitioners Act with other states that enact
24 similar legislation, the department of health shall consult
25 with and consider the approaches to filing, processing and

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1 paying claims taken by agencies with similar authority in other
2 states.

3 Section 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--

4 In applying and construing the Uniform Emergency Volunteer
5 Health Practitioners Act, consideration shall be given to the
6 need to promote uniformity of the law with respect to its
7 subject matter among states that enact it.

8 Section 14. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2008.